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FIRST APPEAL NO. 7051 Of 1995

Date of Decision : 14.03.1996

For Approval & Signature
THE HON'BLE MR. JUSTICE N.J.PANDYA
AND
THE HON'BLE MR. JUSTICE A. R. DAVE

1. Whether reporters of Local Papers may be allowed to see the judgment ?

2. To be referred to the Reporter or not ?

3. Whether their Lordships wish to see the fair copy of the judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any other order made thereunder ?

5. Whether it is to be circulated to the C...

Mr. Ajay R.Mehta , learned Advocate for the Appellant.
Mr. Kanabar , learned Advocate for the Respondent - Orig. Claimants.

CORAM ; N.J.PANDYA & A.R. DAVE, JJ
14.03.1996

ORAL JUDGMENT : [Per : Pandya, J]

This appeal is filed against the Award given by the learned M.A.C.Tribunal, Amreli in M.A.C. Petition No. 273/93. Along with the matter, the claim petition No. 21/94 was also

filed and it was also disposed of by the same judgment, but no appeal is filed in respect thereof.

The case put forward before the trial court was that the present respondent who was going on a moped belonging to his father with a moderate speed on the correct side of the road, when a scooterist riding scooter bearing No. GTV 8175 came on the main road from side-lane and dashed with the moped of respondent no.1 causing damage to his vehicle and injuries to him.

The learned M.A.C.Tribunal, Amreli by the judgment dated 15.8.1995, partly allowed the claim of the respondent and awarded him Rs. 2,18,000/ against the total amount claimed at Rs. 2,37.000/. It is with costs and interest at the rate of 15% from the date of petition till realisation.

The appeal is filed by the owner of the said vehicle as well as Insurer of the scooter involved in the accident. While the person who was driving scooter at the relevant time is joined as respondent no.2 who was the original opponent before the trial court.

The appellants have mainly contested the quantum. The grievance made is that the learned Tribunal has wrongly applied multiplier of 20. This plea has to be accepted for no other reason, but only on the ground that hon'ble Supreme Court in the judgment reported in 1994 ACJ (1) has in no uncertain terms held that awarding compensation on the basis of a particular year's purchase is the correct method and ordinarily multiplier should be applied upto 15 only and multiplier admittedly given here by the trial court is on much higher side.

Respondent no.1 had suffered fracture of right ankle joint resulting into permanent partial disablement assessed at 40% and taken in relation to the entire body as 20% by the Tribunal. It might strike on a higher side, but on examination, respondent no.1 at the relevant time had got himself enrolled in Diploma in electric Engineering Course at Belgaon and was on the way of becoming Electrical Engineer (Diploma). By very nature, the person having this qualification would be in lower rank if he joins service and will have, therefore, most of time on the floor of the factory.The defect left out in the ankle joint would immediately be felt so far as performance of his duties is concerned and, therefore, in relation to the reduction in his earning capacity- ability 20% awarded by the Tribunal, in our opinion, is correct.

Once this aspect is taken care of, for the data figure taken by the Tribunal, if nothing is found wrong, then except for correcting the said multiplier of 20 to that of 15, nothing further is required to be done.

Data figure is taken on the basis that at the time of recording his evidence, respondent no.1 was found earning Rs.1200/ to 1300/ per month. His claim was that he would have earned atleast Rs. 7500/ in due course of time if he had completed his studies and employed himself in a particular line of engineering. The learned Tribunal has not accepted that figure of Rs. 7500/, but has taken figure of Rs. 5000/ and taking two figures of Rs. 1250/ and Rs.5000/ and worked out mean figure at Rs. 3000/. This approach, in our opinion, is correct and, therefore, we would not disturb the same.

However, applying multiplier of 15 would have the direct result of reducing the amount awarded under the heading of future economic loss by Rs. 36,000/. Thus, instead of Rs. 1,44,000/ awarded by the Tribunal, under this heading, the amount now awarded will be Rs. 1,08,000/.

The learned Advocate Mr. Mehta appearing for the appellants has also drawn our attention to the fact that the learned Tribunal awarded sum of Rs. 12,000/ towards the amount spent when boy was pursuing his study at Belgaon and has awarded a sum of Rs. 16,000/ in respect of amount of donation given by respondents for getting admission at Belgaon Institution in the aforesaid course.

So far as sum of Rs. 12,000/ is concerned, in our opinion, that is incorrectly granted. Had respondent no.1 been pursuing his studies and staying with his parents, they would have certainly spent amount on him. Nodoubt, there is a possibility of amount being spent on student staying in hostel away from the house being on higher side, but that by itself, in our opinion, cannot be correlated with the incident for the purpose of awarding damages. In other words, spending of that amount has nothing to do with the incident. That amount would, in any case, have been spent by them whether the boy would have been at Belgaon or with parents at Amreli.

Donation itself stands on a different footing as submitted by learned Advocate Shri Kanabar. That amount was spent for the purpose of getting admission. Admission is lost as a direct result of the accident because boy had to undergo setting of bones twice and, therefore, to remain in plaster for a long duration of almost six months and as a result, the respondent no.1 had lost his study and admission.

It is on record that an attempt was made to get the said amount of donation back from the said educational Institution, but he did not succeed. That amount is definitely lost and loss can be linked with the accident and, therefore, it would not be

hit by remoteness and that amount is, therefore, correctly granted by the Tribunal.

Learned Advocate Shri Kanabar had strongly urged that within the limits of amount claimed, if under different heading less amount has been found to have been awarded to respondent no.1, he can certainly request the court and pray for increase if circumstances of the case so warrant. Accepting this plea, if we examine in relation to grant of amount under the heading of pain, shock and suffering and loss of future amenities and in relation thereto only, the aforesaid request was made by Shri Kanabar, the amount awarded by the Tribunal turns out to Rs.15,000/ vis. Rs. 10,000/ towards pain, shock and sufferings and Rs. 5,000/ towards reduction of prospects of marriage on account of disablement. Amount comes to Rs. 15,000/ as stated above.

Looking to the nature of injury and other amount that has been awarded, in our opinion, there is no need for increasing aforesaid amount.

The net result, therefore, is that the appeal is partly allowed and the amount awarded by the Tribunal is now reduced to Rs. 1,70,000/ and remaining amount awarded by the Tribunal is set aside.The order of the Tribunal as to interest and costs etc. will remain as it is in respect of said amount of Rs. 1,70,000/. In consequence of the said reduction in the award amount, the Tribunal shall refund the amount deposited in excess to the Insurance Company in accordance therewith.

By interim order passed by this Court earlier, respondent no.1 was ordered to be paid Rs. 20,000/.For remaining amount, the respondent no.1 may approach the Tribunal with a request for disbursement and after considering merits of the request, the Tribunal shall pass the appropriate orders.
Appeal stands allowed accordingly.

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